

ASSEMBLY, No. 583

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblyman JOHN DIMAIO

District 23 (Hunterdon, Somerset and Warren)

Co-Sponsored by:

Assemblyman Space

SYNOPSIS

Requires State compensation of property owners for certain property devalued due to certain environmental laws; and requires State agencies to evaluate proposed administrative rules for potential to constitute taking of real property.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** concerning diminution in the fair market value of real
2 property due to State action pursuant to certain laws, amending
3 and supplementing P.L.1968, c.410 (C.52:14B-1 et seq.), and
4 supplementing Title 20 of the Revised Statutes.

5

6 **BE IT ENACTED** *by the Senate and General Assembly of the State*
7 *of New Jersey:*

8

9 1. (New section) Sections 1 through 7 of this act shall be
10 known, and may be cited, as the "New Jersey Property Rights
11 Protection Act."

12

13 2. (New section) The Legislature finds and declares that:

14 a. The right to own real property is essential to the existence of
15 a free and strong democratic society, and reasonable and limited
16 regulatory controls on the development of real property are
17 essential to ensure the protection of unwarranted and inappropriate
18 development by one landowner that would unfairly impinge on the
19 rights of other landowners or jeopardize the health or safety of New
20 Jersey's citizens.

21 b. Actions taken by the Department of Environmental
22 Protection, the Pinelands Commission, and other State
23 bureaucracies to regulate the development of real property have
24 often been excessive and unreasonable and have significantly and
25 unfairly diminished the value of real property owned by individuals,
26 thereby eroding substantial lifetime investments, individual
27 freedom, and economic independence; and the Highlands Water
28 Protection and Planning Council has been empowered to stringently
29 regulate land use in much of the Highlands Region.

30 c. The United States Supreme Court and the New Jersey
31 Supreme Court have both held that, unless the value of real property
32 is reduced to virtually nothing by the action or actions of the State,
33 there is no governmental obligation to compensate the property
34 owner for that lost value.

35 d. The New Jersey Supreme Court has even gone so far as to
36 hold that restricting a property owner in the pinelands area to
37 developing his or her land at a rate of one residential unit per 40
38 acres does not necessarily constitute a taking and, therefore, does
39 not require payment of any compensation to the affected property
40 owner even though significant lifetime investments may have been
41 virtually destroyed.

42 e. The costs associated with seeking compensatory relief
43 through judicial intervention is prohibitively expensive, time-
44 consuming, and unpredictable, given the unclear, contradictory
45 vague rulings of the courts as to the meaning and application of the

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 "takings" clauses of the United States Constitution and the New
2 Jersey Constitution.

3 f. The open and democratic legislative process is the
4 appropriate forum to debate and establish the level of regulation
5 that may be forced upon property owners by the State without the
6 State being required to pay compensation.

7 g. It is therefore appropriate for the State to compensate any
8 property owner whose property is diminished in value by 20% or
9 more as a result of an action or actions taken by the State, and to
10 require the Attorney General to establish standards for the adoption
11 of regulations in order to ensure that the State does not adopt
12 regulations that constitute a regulatory taking of private property as
13 established by the courts.

14

15 3. (New section) As used in sections 1 through 7 of this act:

16 "Environmental law" means R.S.12:5-1 et seq.; "The Wetlands
17 Act of 1970," P.L.1970, c.272 (C.13:9A-1 et seq.); the "Freshwater
18 Wetlands Protection Act," P.L.1987, c.156 (C.13:9B-1 et seq.); the
19 "Hackensack Meadowlands Reclamation and Development Act,"
20 P.L.1968, c.404 (C.13:17-1 et seq.); the "Pinelands Protection Act,"
21 P.L.1979, c.111 (C.13:18A-1 et seq.); the "Coastal Area Facility
22 Review Act," P.L.1973, c.185 (C.13:19-1 et seq.); the "Highlands
23 Water Protection and Planning Act," P.L.2004, c.120 (C.13:20-1 et
24 seq.); and the "Flood Hazard Area Control Act," P.L.1962, c.19
25 (C.58:16A-50 et seq.); or any amendment or supplement to any of
26 those laws.

27 "Fair market value" means the most probable price at which real
28 property would be sold, in a competitive and open market under all
29 conditions requisite to a fair sale, between a willing buyer and a
30 willing seller, neither of whom is under any compulsion to buy or
31 sell and both having reasonable knowledge of relevant facts, at the
32 time the State action occurs.

33 "Property" or "real property" means privately owned land, or any
34 right, easement, or other interest therein, and all structures located
35 thereon.

36 "State action" means enactment of an environmental law,
37 adoption of a rule or regulation pursuant to an environmental law,
38 an administrative application or interpretation by a State agency of
39 such a rule or regulation, or an action of a State agency to grant,
40 deny, modify, suspend, or revoke a license, permit, certificate,
41 approval, registration, or other form of permission required by an
42 environmental law.

43 "State agency" means the Department of Environmental
44 Protection, the Highlands Water Protection and Planning Council,
45 the New Jersey Meadowlands Commission, or the Pinelands
46 Commission.

47 "Tax lot" means a single entry on the property tax list of a
48 municipality.

1 4. (New section) a. The State shall compensate the owner of
2 real property whose use of all or any portion of that property has
3 been limited by State action, occurring during the time of
4 ownership, that diminishes the fair market value of the entire
5 property by 20 percent or more. The amount of the compensation
6 shall equal the diminution in fair market value that resulted from
7 the State action. If the diminution in the fair market value of the
8 property is greater than 50%, at the option of the owner the State
9 shall purchase the entire property, or the affected portion thereof as
10 designated by the owner, for its fair market value. For purposes of
11 calculating the percentage diminution in fair market value pursuant
12 to this subsection, at the option of the property owner, the property
13 at issue may be considered as one parcel regardless of the number
14 of contiguous tax lots comprising that parcel, or each such
15 component tax lot may be considered to be a separate parcel from
16 all of the other contiguous tax lots owned by that person.

17 b. Real property with respect to which compensation has been
18 paid under this act shall not thereafter be used contrary to the
19 limitation imposed by the State action, even if that action is later
20 rescinded or otherwise vitiated. If, however, that action is later
21 rescinded or otherwise vitiated, and the property owner refunds the
22 amount of the compensation paid, adjusted for inflation, to the
23 General Fund of the State of New Jersey, the property may be used
24 contrary to the limitation imposed by the State action. An inflation
25 adjustment required pursuant to this subsection shall be an amount
26 equal to the percentage increase in the consumer price index for all
27 urban consumers in the New York and Philadelphia areas as
28 reported by the United States Department of Labor, from the date of
29 payment of compensation by the State to the property owner to the
30 date of payment of the refund of the amount of compensation by the
31 property owner to the State.

32 c. (1) A person may apply for compensation pursuant to this
33 act only while the person still owns the parcel of real property that
34 was subject to the State action.

35 (2) An owner of real property may not apply for compensation
36 pursuant to this act for a State action that occurred prior to
37 ownership.

38 d. For the purposes of sections 1 through 7 of this act, the use
39 of real property shall be deemed "limited" if a particular legal right
40 to use that property no longer exists because of the State action.

41
42 5. (New section) a. An owner of real property seeking
43 compensation under this act shall make a written request for
44 compensation to the State agency whose action resulted in the
45 limitation on the use of the property. If the State action for which
46 compensation is sought is the enactment of an environmental law,
47 the owner of the real property shall make the written request to the
48 State agency with statutory responsibility for administering the

1 environmental law at issue.

2 b. The State agency may bargain with the property owner to
3 establish the amount of compensation. If the State agency and the
4 owner agree to the amount of compensation, the State Treasurer
5 shall promptly pay it to the property owner from funds from the
6 annual appropriation to the State agency.

7 c. If, within 180 days after the written request is made by the
8 property owner, the State agency and the property owner do not
9 reach an agreement as to the right to and amount of compensation,
10 the property owner may choose to submit two appraisals conducted
11 by two different real estate appraisers, who are licensed by the State
12 Real Estate Appraiser Board pursuant to P.L.1991, c.68 (C.45:14F-
13 1 et seq.), showing the percentage and absolute diminution in fair
14 market value of the property attributable to the State action, and the
15 average of the two appraisals of the absolute diminution in fair
16 market value attributable to the State action, and an amount equal to
17 the property owner's cost in obtaining the two appraisals, shall be
18 paid promptly by the State Treasurer to the property owner.

19 d. (1) Any payment made pursuant to this section to a property
20 owner shall, notwithstanding the provisions of any other law, be
21 made by the State Treasurer from such funds as may be made
22 available therefor pursuant to an annual appropriation by the
23 Legislature to the applicable State agencies.

24 (2) If insufficient funds exist for the payment of compensation,
25 the head of the State agency shall enter into a memorandum of
26 understanding with the property owner that shall provide that the
27 State action leading to the diminution in fair market value of the
28 real property shall not be applied, implemented, or enforced, as the
29 case may be, with respect to that property, notwithstanding any law,
30 rule, or regulation to the contrary.

31

32 6. (New section) Whenever a State agency takes an action
33 pursuant to an environmental law that results in limiting the use of
34 real property, the State agency shall give appropriate notice to the
35 affected property owners explaining their rights under this act and
36 the procedures for obtaining any compensation that may be due to
37 them under this act. With respect to the proposal or adoption of any
38 rule or regulation pursuant to an environmental law that may limit
39 the use of real property, at a minimum such notice shall be
40 published in the New Jersey Register at the time the rule or
41 regulation is proposed or adopted, as the case may be. Notice shall
42 also be included in every application form for a license, permit,
43 certificate, approval, registration, or other form of permission
44 required by an environmental law.

45

46 7. (New section) a. Nothing in this act shall be construed to
47 limit any right of compensation that exists under the New Jersey
48 Constitution, any other State law, the United States Constitution, or

1 any federal law.

2 b. Payment of compensation under this act, other than when the
3 property is purchased by the State at the option of the property
4 owner, shall not confer any rights on the State other than the
5 limitation on use resulting from the State action.

6
7 8. (New section) The Attorney General shall establish
8 guidelines that shall be used by State agencies in their evaluation of
9 rules prior to their adoption, amendment, or repeal to assess the
10 potential of a rule to constitute a taking of real property. The
11 guidelines shall be based upon the most current law as articulated
12 by the United States Supreme Court and the New Jersey Supreme
13 Court. The Attorney General shall review and, if necessary, update
14 the guidelines on an annual basis.

15 As used in this section, "State agency" means each of the
16 principal departments in the executive branch of the State
17 government, and all boards, divisions, commissions, agencies,
18 councils, authorities, offices, or officers with any such department
19 authorized to grant, deny, modify, suspend, or revoke a license,
20 permit, certificate, approval, registration, or other form of
21 permission required by law, other than a license or certificate issued
22 to an individual for the practice of a profession or occupation; and
23 "taking" means the taking of real property for public use that would
24 require compensation pursuant to the United States Constitution or
25 the New Jersey Constitution.

26
27 9. Section 4 of P.L.1968, c.410 (C.52:14B-4) is amended to
28 read as follows:

29 4. (a) Prior to the adoption, amendment, or repeal of any rule,
30 except as may be otherwise provided, the agency shall:

31 (1) Give at least 30 days' notice of its intended action. The
32 notice shall include a statement of either the terms or substance of
33 the intended action or a description of the subjects and issues
34 involved, and the time when, the place where, and the manner in
35 which interested persons may present their views thereon. The
36 notice shall be mailed to all persons who have made timely requests
37 of the agency for advance notice of its rule-making proceedings and
38 in addition to other public notice required by law shall be published
39 in the New Jersey Register. Notice shall also be distributed to the
40 news media maintaining a press office to cover the State House
41 Complex, and made available electronically through the largest
42 nonproprietary cooperative public computer network. Each agency
43 shall additionally publicize the intended action and shall adopt rules
44 to prescribe the manner in which it will do so, and inform those
45 persons most likely to be affected by or interested in the intended
46 action. Methods that may be employed include publication of the
47 notice in newspapers of general circulation or in trade, industry,
48 governmental or professional publications, distribution of press

1 releases to the news media and posting of notices in appropriate
2 locations. The rules shall prescribe the circumstances under which
3 each additional method shall be employed;

4 (2) Prepare for public distribution at the time the notice appears
5 in the Register a statement setting forth a summary of the proposed
6 rule, a clear and concise explanation of the purpose and effect of the
7 rule, the specific legal authority under which its adoption is
8 authorized, a description of the expected socio-economic impact of
9 the rule, a regulatory flexibility analysis, or the statement of finding
10 that a regulatory flexibility analysis is not required, as provided in
11 section 4 of P.L.1986, c.169 (C.52:14B-19), a jobs impact statement
12 which shall include an assessment of the number of jobs to be
13 generated or lost if the proposed rule takes effect, **[and]** an
14 agriculture industry impact statement as provided in section 7 of
15 P.L.1998, c.48 (C.4:1C-10.3) , and an evaluation of the rule for its
16 potential to result in a taking of private property for public use without
17 just compensation, based upon guidelines established therefor by the
18 Attorney General pursuant to section 8 of P.L. , c. (C.) (pending
19 before the Legislature as this bill); and

20 (3) Afford all interested persons reasonable opportunity to
21 submit data, views, or arguments, orally or in writing. The agency
22 shall consider fully all written and oral submissions respecting the
23 proposed rule. If within 30 days of the publication of the proposed
24 rule sufficient public interest is demonstrated in an extension of the
25 time for submissions, the agency shall provide an additional 30 day
26 period for the receipt of submissions by interested parties. The
27 agency shall not adopt the proposed rule until after the end of that
28 30 day extension.

29 The agency shall conduct a public hearing on the proposed rule
30 at the request of a committee of the Legislature, or a governmental
31 agency or subdivision, or if sufficient public interest is shown,
32 provided such request is made to the agency within 30 days
33 following publication of the proposed rule in the Register. The
34 agency shall provide at least 15 days' notice of such hearing, which
35 shall be conducted in accordance with the provisions of subsection
36 (g) of this section.

37 The head of each agency shall adopt as part of its rules of
38 practice adopted pursuant to section 3 of P.L.1968, c.410
39 (C.52:14B-3) definite standards of what constitutes sufficient public
40 interest for conducting a public hearing and for granting an
41 extension pursuant to this paragraph.

42 (4) Prepare for public distribution a report listing all parties
43 offering written or oral submissions concerning the rule,
44 summarizing the content of the submissions and providing the
45 agency's response to the data, views and arguments contained in the
46 submissions.

47 (b) A rule prescribing the organization of an agency may be
48 adopted at any time without prior notice or hearing. Such rules

1 shall be effective upon filing in accordance with section 5 of this
2 act or upon any later date specified by the agency.

3 (c) If an agency finds that an imminent peril to the public
4 health, safety, or welfare requires adoption of a rule upon fewer
5 than 30 days' notice and states in writing its reasons for that finding,
6 and the Governor concurs in writing that an imminent peril exists, it
7 may proceed without prior notice or hearing, or upon any
8 abbreviated notice and hearing that it finds practicable, to adopt the
9 rule. The rule shall be effective for a period of not more than 60
10 days unless each house of the Legislature passes a resolution
11 concurring in its extension for a period of not more than 60
12 additional days. The rule shall not be effective for more than 120
13 days unless repromulgated in accordance with normal rule-making
14 procedures.

15 (d) No rule hereafter adopted is valid unless adopted in
16 substantial compliance with this act. A proceeding to contest any
17 rule on the ground of noncompliance with the procedural
18 requirements of this act shall be commenced within one year from
19 the effective date of the rule.

20 (e) An agency may file a notice of intent with respect to a
21 proposed rule-making proceeding with the Office of Administrative
22 Law, for publication in the New Jersey Register at any time prior to
23 the formal notice of action required in subsection (a) of this section.
24 The notice shall be for the purpose of eliciting the views of
25 interested parties on an action prior to the filing of a formal rule
26 proposal. An agency may use informal conferences and
27 consultations as means of obtaining the viewpoints and advice of
28 interested persons with respect to contemplated rule-making. An
29 agency may also appoint committees of experts or interested
30 persons or representatives of the general public to advise it with
31 respect to any contemplated rule-making.

32 (f) An interested person may petition an agency to adopt a new
33 rule, or amend or repeal any existing rule. Each agency shall
34 prescribe by rule the form for the petition and the procedure for the
35 submission, consideration and disposition of the petition. The
36 petition shall state clearly and concisely:

37 (1) The substance or nature of the rule-making which is
38 requested;

39 (2) The reasons for the request and the petitioner's interest in the
40 request;

41 (3) References to the authority of the agency to take the
42 requested action.

43 The petitioner may provide the text of the proposed new rule,
44 amended rule or repealed rule.

45 Within 60 days following receipt of any such petition, the agency
46 shall either; (i) deny the petition, giving a written statement of its
47 reasons; (ii) grant the petition and initiate a rule-making proceeding
48 within 90 days of granting the petition; or (iii) refer the matter for

1 further deliberations which shall be concluded within 90 days of
2 referring the matter for further deliberations. Upon conclusion of
3 such further deliberations, the agency shall either deny the petition
4 and provide a written statement of its reasons or grant the petition
5 and initiate a rule-making proceeding within 90 days. Upon the
6 receipt of the petition, the agency shall file a notice stating the name
7 of the petitioner and the nature of the request with the Office of
8 Administrative Law for publication in the New Jersey Register.
9 Notice of formal agency action on such petition shall also be filed
10 with the Office of Administrative Law for publication in the
11 Register.

12 If an agency fails to act in accordance with the time frame set
13 forth in the preceding paragraph, upon written request by the
14 petitioner, the Director of the Office of Administrative Law shall
15 order a public hearing on the rule-making petition and shall provide
16 the agency with a notice of the director's intent to hold the public
17 hearing if the agency does not. If the agency does not provide
18 notice of a hearing within 15 days of the director's notice, the
19 director shall schedule and provide the public with a notice of that
20 hearing at least 15 days prior thereto. If the public hearing is held
21 by the Office of Administrative Law, it shall be conducted by an
22 administrative law judge, a person on assignment from another
23 agency, a person from the Office of Administrative Law assigned
24 pursuant to subsection o. of section 5 of P.L.1978, c.67 (C.52:14F-
25 5), or an independent contractor assigned by the director. The
26 petitioner and the agency shall participate in the public hearing and
27 shall present a summary of their positions on the petition, a
28 summary of the factual information on which their positions on the
29 petition are based and shall respond to questions posed by any
30 interested party. The hearing procedure shall otherwise be
31 consistent with the requirements for the conduct of a public hearing
32 as prescribed in subsection (g) of section 4 of P.L.1968, c.410
33 (C.52:14B-4), except that the person assigned to conduct the
34 hearing shall make a report summarizing the factual record
35 presented and the arguments for and against proceeding with a rule
36 proposal based upon the petition. This report shall be filed with the
37 agency and delivered or mailed to the petitioner. A copy of the
38 report shall be filed with the Legislature along with the petition for
39 rule-making.

40 (g) All public hearings shall be conducted by a hearing officer,
41 who may be an official of the agency, a member of its staff, a
42 person on assignment from another agency, a person from the
43 Office of Administrative Law assigned pursuant to subsection o. of
44 section 5 of P.L.1978, c.67 (C.52:14F-5) or an independent
45 contractor. The hearing officer shall have the responsibility to
46 make recommendations to the agency regarding the adoption,
47 amendment or repeal of a rule. These recommendations shall be
48 made public. At the beginning of each hearing, or series of

1 hearings, the agency, if it has made a proposal, shall present a
2 summary of the factual information on which its proposal is based,
3 and shall respond to questions posed by any interested party.
4 Hearings shall be conducted at such times and in locations which
5 shall afford interested parties the opportunity to attend. A verbatim
6 record of each hearing shall be maintained, and copies of the record
7 shall be available to the public at no more than the actual cost,
8 which shall be that of the agency where the petition for rule-making
9 originated.

10 (cf: P.L.2001, c.5, s.2)

11
12 10. This act shall take effect immediately.
13
14

15 STATEMENT 16

17 This bill would require the State to compensate any property
18 owner whose use of all or any portion of that person's property has
19 been limited by State action, occurring during the time of
20 ownership, that diminishes the fair market value of the entire
21 property by 20 percent or more. The amount of the compensation
22 would equal the diminution in fair market value that resulted from
23 the State action. If the diminution in the fair market value of the
24 property is greater than 50%, at the option of the owner the State
25 would be required to purchase the entire property, or the affected
26 portion thereof as designated by the owner, for its fair market value.
27 For purposes of calculating the percentage diminution in fair market
28 value pursuant to the bill, at the option of the property owner, the
29 property at issue may be considered as one parcel regardless of the
30 number of contiguous tax lots comprising that parcel, or each such
31 component tax lot may be considered to be a separate parcel from
32 all of the other contiguous tax lots owned by that person.

33 The bill defines "State action" to mean enactment of an
34 environmental law, adoption of a rule or regulation pursuant to an
35 environmental law, an administrative application or interpretation
36 by a State agency of such a rule or regulation, or an action of a
37 State agency to grant, deny, modify, suspend, or revoke a license,
38 permit, certificate, approval, registration, or other form of
39 permission required by an environmental law; "State agency" to
40 mean the Department of Environmental Protection, the Highlands
41 Water Protection and Planning Council, the New Jersey
42 Meadowlands Commission, or the Pinelands Commission; and
43 "environmental law" to mean the waterfront development law, "The
44 Wetlands Act of 1970," the "Freshwater Wetlands Protection Act,"
45 the "Hackensack Meadowlands Reclamation and Development
46 Act," the "Pinelands Protection Act," the "Coastal Area Facility
47 Review Act," the "Highlands Water Protection and Planning Act,"
48 and the "Flood Hazard Area Control Act," or any amendment or

1 supplement to any of those laws.

2 Real property with respect to which compensation has been paid
3 under the bill could not thereafter be used contrary to the limitation
4 imposed by the State action, even if that action is later rescinded or
5 otherwise vitiated. If, however, that action is later rescinded or
6 otherwise vitiated, and the property owner refunds the amount of
7 the compensation paid, adjusted for inflation, to the State, the
8 property could be used contrary to the limitation imposed by the
9 State action.

10 Under the bill, a person may apply for compensation pursuant to
11 the bill only while the person still owns the parcel of real property
12 that was subject to the State action. Also, an owner of real property
13 may not apply for compensation pursuant to the bill for a State
14 action that occurred prior to ownership.

15 The bill would provide that any payment made pursuant to the
16 bill to a property owner would, notwithstanding the provisions of
17 any other law, be made by the State Treasurer from such funds as
18 may be made available therefor pursuant to an annual appropriation
19 by the Legislature to the applicable State agencies. If insufficient
20 funds exist for the payment of compensation, the head of the
21 affected State agency would be required to enter into a
22 memorandum of understanding with the property owner that would
23 provide that the State action leading to the diminution in fair market
24 value of the real property shall not be applied, implemented, or
25 enforced, as the case may be, with respect to that property,
26 notwithstanding any law, rule, or regulation to the contrary.

27 The bill also sets forth procedures for providing notice of the
28 bill's provisions to affected property owners and procedures for
29 applying to obtain compensation.

30 This bill would also require that the notice of the adoption,
31 amendment, or repeal of any administrative rule include an
32 evaluation of the rule's potential to constitute a taking of real
33 property in violation of the federal and State constitutional
34 provisions that prohibit the taking of private property for public use
35 without just compensation. The bill would require that the Attorney
36 General establish guidelines for the review of administrative rules
37 that conform to the law as articulated in the most current United
38 States Supreme Court and Supreme Court of New Jersey opinions.

39 The provisions of this bill put into action a national trend of state
40 governments, as well as the federal government, to be more
41 sensitive to the effect of regulations upon the rights of private
42 property owners.